

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION**

HEREDITARY CHIEF WILBUR SLOCKISH,
HEREDITARY CHIEF JOHNNY JACKSON,
CAROL LOGAN,
CASCADE GEOGRAPHIC SOCIETY,
AND
MOUNT HOOD SACRED LANDS
PRESERVATION ALLIANCE,
PLAINTIFFS,

V.

UNITED STATES FEDERAL HIGHWAY
ADMINISTRATION,
UNITED STATES BUREAU OF LAND
MANAGEMENT,
AND
ADVISORY COUNCIL ON HISTORIC
PRESERVATION.

DEFENDANTS.

Case No. 3:08-cv-1169

JOINT STATUS REPORT

Pursuant to the Court's order of June 12, 2018, ECF No. 313, the Parties hereby submit a joint status report that identifies the claims and issues remaining in the case and proposes a schedule for resolution of the remaining issues in the case.

Remaining claims in this case

Plaintiffs' Fourth Amended Complaint contains the following claims:

1. Failure to inventory under the National Historic Preservation Act

2. Failure to nominate under National Register of Historic Places
3. Failure to consult under both the National Historic Preservation Act and the Native American Graves Protection and Repatriation Act
4. Failure to ensure standards of professional archeology under the National Historic Preservation Act
5. Deficient Review under Section 106 of the National Register of Historic Places
6. Deficient Environmental Assessment under the National Environmental Policy Act
7. Failure to identify Section 4(f) resources under 23 U.S.C. § 138 and 49 U.S.C. § 303.
8. Failure to advise under the National Register of Historic Places
9. Legally deficient tree-cutting permit under the National Historic Preservation Act
10. Legally deficient approval of a grant of right-of-way under Section 106, and without an Environmental Assessment under NEPA
11. Violation of the Administrative Procedure Act
12. Due process violation
13. Free exercise of religion under both the Religious Freedom Restoration Act and the Free Exercise Clause of the First Amendment.

ECF No. 223. Federal Defendants moved for partial summary judgment asserting that “[t]he Federal Defendants are entitled to summary judgment on Plaintiffs’ RFRA claim.” ECF No. 287 at 2. They argued, *inter alia*, Plaintiffs had failed to demonstrate a “substantial burden” on their religious exercise. *Id.* This Court recommended Federal defendants’ motion for partial summary judgment be granted and the claim dismissed. ECF No. 300. Judge Hernandez

adopted in part the recommendation, and ordered that “Defendant’s Motion for Partial Summary Judgment 287 is GRANTED in part, and Plaintiffs Thirteenth Claim for Relief under RFRA is dismissed. Plaintiffs Motion for Partial Summary Judgment 294 is DENIED.” ECF No. 312.

The parties disagree regarding whether Plaintiff’s Thirteenth Claim is dismissed in its entirety. Plaintiffs believe that the Thirteenth Claim was dismissed to the extent it arises “under RFRA,” ECF No. 312, but not to the extent it arises under “the Free Exercise Clause of the First Amendment,” ECF No. 223—both because Defendants moved for partial summary judgment only under RFRA, and because a claim under the Free Exercise Clause does not necessarily require a showing of a “substantial burden.” Defendants believe the Thirteenth Claim was dismissed in its entirety. The other claims in Plaintiffs’ Fourth Amended Complaint remain. *See* ECF No. 223.

Remaining issues in the case

There are three main issues addressed in this schedule. First, Plaintiffs indicated they plan to move to the Court to direct entry of a final judgment as to Plaintiffs thirteenth claim regarding the Religious Freedom Restoration Act (RFRA) and stay the remaining twelve claims pending an appeal. *See* Fed. R. Civ. P. 54(b). Federal Defendants plan to oppose the motion for entry of judgment.

In the event that the motion for certification is denied, Plaintiffs have indicated they plan to move for additional discovery. Defendants plan to oppose additional discovery. Once the issue of discovery is resolved, the Parties plan to resolve the remaining twelve claims in the case through cross motions for summary judgment. The Parties have agreed to a schedule as follows:

Proposed schedule

<u>Filing</u>	<u>Deadline</u>
Plaintiffs' motion for stay and certification under Rule 54(b)	14 days from entry of scheduling order
Defendants' opposition to Plaintiffs' motion for certification under Rule 54(b)	21 days from Plaintiffs' motion for certification
If motion for certification is granted: Plaintiffs' notice of appeal	60 days after Rule 54(b) certification
If motion for certification is denied: Plaintiffs' motion for discovery	60 days after Plaintiffs' motion for certification is denied
Defendants' opposition to Plaintiffs' motion for discovery	30 days after Plaintiffs' motion for discovery
If Plaintiffs' motion for discovery is granted	A discovery period of 180 days
Plaintiffs' motion for summary judgment	30 days after Plaintiffs' motion for discovery is denied
OR	
	30 days after the close of the discovery period
Defendants' cross-motion for summary judgment and opposition to Plaintiffs' motion for summary judgment	30 days after Plaintiffs' Motion for Summary Judgment

<u>Filing</u>	<u>Deadline</u>
Plaintiffs' reply in opposition to Defendants' cross motion and in support of their motion for summary judgment	14 days after Defendants' Cross-Motion
Defendants' reply in support of their cross-motion for summary judgment and opposition to Plaintiffs' motion for summary judgment	14 days after Plaintiffs' Reply

The Parties respectfully request the Court adopt the schedule above.

Respectfully submitted on July 10, 2018,

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 Environment and Natural Resources Division

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CERTIFICATE OF SERVICE

I, Reuben S. Schifman, hereby certify that on July 10, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, and copies will be sent electronically to the registered participants as identified in the Notice of Electronic Filing.

/s/ Reuben Schifman
REUBEN S. SCHIFMAN